

Message Text

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FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 1410

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DEPT PLS PASS TO JUSTICE DEPT MR. BRUNO RISTAU

E.O. 11652: N/A
TAGS: AFSP/ACIM
SUBJECT: LABOR CLAIM-ISABEL BAKER RIBEIRO-SAO PAULO

THE EMBASSY WAS INFORMED BY LAWYER PAULO BEKIN THAT THE HEARING ON SUBJECT CASE WASH HELD ON APRIL 25, 1977. HE FURNISHED THE FOLLOWING REPORT, QUOTED VERBATIM BELOW. DR. BEKIN TOLD THE EMBASSY THAT HE HAD INFORMED DR. RISTAU OF THE DECISION REACHED BY THE COURT AND DISCUSSED THE NEXT MOVE IN THE CASE. BEGIN QUOTE:

"HEARING FOR RENDERING OF DECISION WAS HELD ON APRIL 25, 1977.

IN ADDITION TO ALL DOCUMENTARY EVIDENCE AND MEMORAL SUBMITTED AT APPROPRIATE TIME, COUNSEL FOR US GOVERNMENT MADE ORAL PLEA AS FOLLOWS:

A. EVIDENCE BROUGHT TO COURT FILE SHOWS THAT PLAINTIFF WAS DEFINITELY EMPLOYEE OF US GOVERNMENT AS WORKED FOR AGRICULTURAL SECTION IN SAO PAULO WHICH WAS SUBORDINATED TO EMBASSY IN BRASILIA. THEREFORE, IF EARLIER DECISION MAY HAVE BEEN INFLUENCED BY APPEARANCE OF HER EMPLOYER BEING THE CONSULATE (FOR THOSE WHO CONSIDER THAT A CONSULATE IS NOT PER SE A FOREIGN GOVERNMENT), IT WAS WARRANTED THAT THE COURT RE-EXAMINE THE MATTER. IN ADDITION, IT WAS POINTED OUT THAT PREVIOUS DECISION BY COURT HOLDING THAT IT HAD JURISDICTION WAS BASED ON ARGUMENTS ON NON-EXISTENCE OF IMMUNITY FROM JURISDICTION. SINCE IMMUNITY FROM JURISDICTION HAD NOT BEEN ALLEGED (SIC) BUT ONLY THAT UNDER BRAZILIAN CONSTITUTIONAL LAW ONLY THE FEDERAL COURTS HAD JURISDICTION, COURT SHOULD RE-EXAMINE
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PREVIOUS RULING AND NOW RULE THAT IT LACKED JURISDICTION.

B. AS EVIDENCE BROUGHT TO COURT FILE SHOWS THAT THE DEFENDANT WAS REALLY A FOREIGN GOVERNMENT, NOTICE OF THE SUIT MAILED TO CONSULATE MUST BE CONSIDERED IMPROPER.

C. AGAIN, AS IT HAD BEEN PROVED THAT DEFENDANT WAS FOREIGN GOVERNMENT, AND EVIDENCE IN THE COURT FILE SHOWED CLEARLY THAT PLAINTIFF HAD BEEN HIRED BY US GOVERNMENT, IN ACCORDANCE WITH FORMS AND

PROCEDURES OF US GOVERNMENT, THE LABOR COURT, IF NOT DISMISSING THE SUIT FOR ANY OF THE PREVIOUS REASONS, MUST APPLY AMERICAN LAW BECAUSE AMERICAN LAW GOVERNS THE RELATIONSHIP BETWEEN THE PARTIES. IT WAS SHOWN THAT BRAZILIAN LAW CALLS FOR THE APPLICATION OF FOREIGN LAW IN CERTAIN CASES AND THAT PRIOR TO DECIDING THE MERITS COURT HAD TO DECIDE WHICH LAW WAS APPLICABLE.

D. ON THE MERITS IT WAS EMPHASIZED THAT PLAINTIFF HAD MADE ALLEGATIONS AND HAD PROVEN NOTHING TO THE CONTRARY, IT WAS DEFENDANT WHICH BY MEANS OF TWO WITNESSES AND ABOUT 15 DOCUMENTS PROVED THAT NONE OF PLAINTIFF'S ALLEGATIONS WERE TRUE AND THAT SHE HAD RESIGNED.

E. FINALLY, IT WAS EMPHASIZED THE NEED TO POSTPONE A DECISION ON THE CASE UNTIL THE SUPREME COURT HAD A CHANCE TO RULE ON THE MATTER OF THE JURISDICTION WHICH WAS TAKEN TO THE HIGHEST COURT BY MEANS OF A WRIT OF MANDAMUS.

THE COURT RULED AS FOLLOWS:

1. NO REASON TO WAIT UNTIL A DECISION ON THE WRIT OF MANDAMUS.
 2. THE MATTER OF JURISDICTION WAS SUBJECT OF MAGNIFICENT RULING (SIC) EARLIER IN THE CASE HOLDING THAT THE LABOR COURTS WERE COMPETENT TO PROCESS THIS SUIT.
 3. MATTER OF IMPROPER NOTICE HAD ALSO BEEN DECIDED EARLIER BY THAT SAME RULING HOLDING THAT NOTICE WAS PROPER.
 4. APPLICATION OF AMERICAN LAW WAS NOT ACCEPTABLE BECAUSE ONCE BRAZILIAN COURTS ARE COMPETENT, CONSEQUENTLY, BRAZILIAN LABOR LAW IS APPLICABLE.
 5. ON THE MERITS: DEFENDANT SHOULD HAVE INSTITUTED ADMINISTRATIVE OR JUDICIAL PROCEEDINGS WITHIN 30 DAYS FROM DATE PLAINTIFF WAS SAID TO HAVE LEFT THE EMPLOYMENT, IN ACCORDANCE WITH LEGAL REQUIREMENT THAT SUCH PROCEEDING TAKE PLACE WITH EMPLOYEES WHO
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WORK FOR MORE THAN 10 YEARS FOR THE SAME EMPLOYER. SINCE DEFENDANT HAD NOT DONE SO, ITS ALLEGATION THAT PLAINTIFF LEFT AND WAS NOT DISMISSED IS NOT PROVEN. THEREFORE, IF DEFENDANT DID NOT PROVE THAT PLAINTIFF RESIGNED, IT FOLLOWS FROM THE VARIOUS CIRCUMSTANCES OF THE CASE THAT SHE WAS DISMISSED. (NOTE: COUNSEL FOR U.S. WAS RETAINED MUCH AFTER THAT 30 DAY PERIOD). COURT THUS DID NOT IN THE LEAST TAKE INTO CONSIDERATION DEPOSITION OF TWO WITNESSES AND VARIOUS DOCUMENTS PRESENTED BY US GOVERNMENT, UTILISING TECHNICALITY TO IGNORE EVIDENCE EXISTING IN THE COURT FILE AND VIOLATING BASIC PRINCIPLE OF LAW THAT WHOEVER ALLEGES SOMETHING HAS TO PROVE IT. AN APPEAL WILL BE FILED WITHIN THE PRESCRIBED PERIOD OF 8 DAYS TO THE REGIONAL LABOR TRIBUNAL OF SAO PAULO." END QUOTE.

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